EFILED 11/22/24 11:46 AM CASE NO. 24C869 Joseph P. Day, Clerk

IN THE EIGHTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

THE CONGRESS GROUP INC., SECOND AVENUE NASHVILLE PROPERTY LLC, CENTRUM REALTY AND DEVELOPMENT, and CRD 2ND AVENUE OWNER, LLC	)	
Plaintiffs	)	
v.	)	**CASE NO.: 24C869**
STEVEN SNYDER, H. ANDREW DECKER, and R. GREGORY BREETZ,	)	
Defendants	)	

MEMORANDUM OPINION AND ORDER

Pending before the Court is Defendants' Motion to Dismiss, pursuant to Tenn. R. Civ. P. 12.02(6), and Petition to Dismiss, pursuant to the Tennessee Public Participation Act ("TPPA"), Tenn. Code Ann. § 20–17–101, *et seq*., filed June 21, 2024 ("the Motion"). Plaintiffs have responded in opposition (*see* Response, July 31, 2024), and Defendants replied (*see* Reply, Aug. 5, 2024). The Court heard oral argument on August 7, 2024. Following the hearing, Plaintiffs filed a supplemental brief (*see* Suppl. Br., Aug. 14, 2024), to which Defendants objected (*see* Defendants' Objection, Aug. 14, 2024).[1]

Having reviewed the briefing and record in this case, heard arguments from counsel, and considered applicable law, the Motion is hereby **GRANTED IN PART** and **DENIED IN PART**. As discussed in more detail below, Defendants' Motion to Dismiss is **GRANTED** with respect to Plaintiffs' claims for abuse of process and malicious prosecution. Specifically, Plaintiffs' claims for Abuse of Process in the Certiorari Actions are **DISMISSED WITH PREJUDICE**; Plaintiffs'

[1] Because the Court invited additional briefing at oral argument, Defendants' objection to Plaintiffs' supplemental briefing is respectfully overruled, and the Court will consider the Supplemental Brief in its analysis.

claims for Abuse of Process in the Declaratory Judgment Actions are **DISMISSED WITHOUT PREJUDICE**; Plaintiffs' claims for Malicious Prosecution in the Certiorari Actions are **DISMISSED WITH PREJUDICE**; and Plaintiffs' claims for Malicious Prosecution in the Declaratory Judgment Actions are **DISMISSED WITHOUT PREJUDICE**. Because these rulings pretermit Defendants' alternative request for relief under the TPPA as to these claims, the Court will not address it. Defendants' Motion to Dismiss is **DENIED** with respect to the Congress Developers' claim for intentional interference with prospective business relationships. Defendants' alternative Petition to Dismiss the Congress Developers' claim for intentional interference with prospective business relationships, pursuant to the TPPA, is similarly **DENIED**. The case shall proceed on this claim.

I. FACTUAL BACKGROUND & PROCEDURAL HISTORY

This case centers on previous litigation brought by Defendants to stop (or inhibit) the development of large residential buildings in their neighborhood by Plaintiffs. A review of the record clearly establishes the strained and contentious relationship between the parties.

On October 28, 2021, Defendants filed suit against The Congress Group, Inc., and Second Avenue Nashville Property, LLC (collectively "the Congress Developers"), among others, in the Davidson County Chancery Court. (*See generally* Petition for Writ of Certiorari, *Snyder et al. v. Metropolitan Nashville Planning Commission, et al.*, No. 21–1077–II (Davidson County Chancery Ct. Oct. 28, 2021)).

On January 5, 2022, Defendants filed suit against Centrum Realty and Development and CRD 2nd Avenue Owner, LLC (collectively "the Centrum Developers"), among others, in the Davidson County Chancery Court. (*See generally* Petition for Writ of Certiorari, *Snyder et al. v.*

Metropolitan Nashville Planning Commission, et al., No. 22–0017–II (Davidson County Chancery Ct. Jan. 5, 2022)).

These two lawsuits (collectively "the Certiorari Actions") were consolidated by the Chancery Court. The Chancery Court denied the petitions for certiorari in both cases. (*See* Memorandum Opinion and Order, *Snyder et al. v. Metropolitan Nashville Planning Commission, et al.*, Nos. 21–1077–II; 22–0017–II (Davidson County Chancery Ct. May 2, 2022)). Defendants (then plaintiffs) appealed. (*See generally Snyder, et al. v. Metro. Nashville Planning Commission, et al.*, No. M2022–00722–COA–R3–CV (Tenn. Ct. App. May 31, 2022)).

As the Court of Appeals observed in a separate case, while the Certiorari Actions were on appeal, the Congress Developers and the Centrum Developers took an alternate route to proceed with their developments by applying to the Nashville Planning Commission for Specific Plan (SP) zoning. (*See Snyder, et al. v. Second Avenue Nashville Property, LLC, et al.*, No. M2023–00498–COA–R3–CV, slip op. at 2 (Tenn. Ct. App. Oct. 31, 2023)). The Metropolitan Council passed ordinances approving the SP zoning, which became effective in December of 2022. *Id.*

Meanwhile, the effect of the SP zoning approval was to moot the Certiorari Actions. Accordingly, the Court of Appeals remanded the Certiorari Actions to the Chancery Court to consider the mootness issue. (*See* Order, *Snyder, et al. v. Metro. Nashville Planning Commission, et al.*, No. M2022–00722–COA–R3–CV (Tenn. Ct. App. Jan. 31, 2023)). Upon consideration on remand, the Chancery Court entered an order setting aside its previous order and vacated the judgment. Defendants (then plaintiff-appellants) subsequently moved to voluntarily dismiss their appeal, which the Court of Appeals granted without opposition on April 27, 2023. (*See* Order, *Snyder, et al. v. Metro. Nashville Planning Commission, et al.*, No. M2022–00722–COA–R3–CV (Tenn. Ct. App. Apr. 27, 2023)). This concluded the Certiorari Actions.

On July 25, 2022, recognizing the impending mootness issue, Defendants filed another lawsuit against the Congress Developers, among others, in the Davidson County Chancery Court. (*See generally* Complaint, *Snyder, et al. v. Second Avenue Nashville Property, et al.*, No. 22–1014–IV (Davidson County Chancery Ct. July 25, 2022)). After the ordinances approving the SP zoning became effective, Defendants filed their First Amended Complaint in that case on January 3, 2023.

On February 3, 2023, Defendants filed another lawsuit against the Centrum Developers, among others, in the Davidson County Chancery Court. (*See generally* Complaint, *Snyder, et al. v. Metro. Gov't of Nashville and Davidson County, et al.*, No. 23–0159–IV (Davidson County Chancery Ct. Feb. 3, 2023)).

These two lawsuits (collectively "the Declaratory Judgment Actions") were consolidated by the Chancery Court. Both the Congress Developers and the Centrum Developers moved to dismiss the cases. On March 10, 2023, the Chancery Court granted the motions and dismissed the Declaratory Judgment Actions for failure to state a claim upon which relief can be granted. (*See generally* Final Order, *Snyder, et al. v. Second Avenue Nashville Property, et al.*, Nos. 22–1014–IV; 23–0159–IV (Davidson County Chancery Ct. Mar. 10, 2023)). Defendants (then plaintiffs) again appealed. (*See generally Snyder, et al. v. Second Avenue Nashville Property, LLC, et al.*, No. M2023–00498–COA–R3–CV (Tenn. Ct. App. Apr. 5, 2023)).

On October 31, 2023, the Court of Appeals issued its opinion and entered judgment affirming the Chancery Court's dismissal. (*See* Judgment, *Snyder, et al. v. Second Avenue Nashville Property, LLC, et al.*, No. M2023–00498–COA–R3–CV (Tenn. Ct. App. Oct. 31, 2023)). Thereafter, Defendants applied for permission to appeal to the Tennessee Supreme Court, which was denied. (*See* Order, *Snyder, et al. v. Second Avenue Nashville Property, LLC, et al.*, No. M2023–00498–SC–R11–CV (Tenn. Apr. 11, 2024)). The mandate issued on April 17, 2024.

This case was initiated by Plaintiffs on April 5, 2024. Two weeks later, before Defendants entered an appearance, Plaintiffs filed their First Amended Complaint ("Compl.")[2] on April 19, 2024, as a matter of course. In the Complaint, all Plaintiffs assert claims for abuse of process and malicious prosecution, and the Congress Developers assert a claim for intentional interference with prospective business relationships. As previously mentioned, Defendants filed the instant Motion on June 21, 2024, arguing all claims against them should be dismissed.

II. LEGAL STANDARDS

"In considering a motion to dismiss, courts must construe the complaint liberally, presuming all factual allegations to be true and giving the plaintiff the benefit of all reasonable inferences." *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011) (quotations omitted). But "courts are not required to accept as true assertions that are merely legal arguments or 'legal conclusions' couched as facts." *Id.* at 427 (citing *Riggs v. Burson*, 941 S.W.2d 44, 47–48 (Tenn. 1997)).

"The resolution of a 12.02(6) motion to dismiss is determined by an examination of the pleadings alone." *Id.* at 426.

> However, "[t]here are exceptions. . . . Numerous cases . . . have allowed consideration of matters incorporated by reference or integral to the claim, items subject to judicial notice, matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint whose authenticity is unquestioned."

Elvis Presley Enterprises, Inc. v. City of Memphis, 620 S.W.3d 318, 322 n.4 (Tenn. 2021) (quoting *Indiana State Dist. Council of Laborers v. Brukardt*, No. M2007–02271–COA–R3–CV, 2009 WL 426237, at *8 (Tenn. Ct. App. Feb. 19, 2009)).

[2] Because it is the operative pleading, all references in this Order to the "Complaint" are references to the First Amended Complaint.

"A trial court should grant a motion to dismiss only when it appears that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." *Webb*, 346 S.W.3d at 426 (citing *Crews v. Buckman Labs. Int'l, Inc.*, 78 S.W.3d 852, 857 (Tenn. 2002); *Lanier v. Rains,* 229 S.W.3d 656, 660 (Tenn. 2007); *Doe v. Sundquist,* 2 S.W.3d 919, 922 (Tenn. 1999); *Pemberton v. Am. Distilled Spirits Co.,* 664 S.W.2d 690, 691 (Tenn. 1984); *Fuerst v. Methodist Hosp. S.,* 566 S.W.2d 847, 848 (Tenn. 1978); *Ladd v. Roane Hosiery, Inc.,* 556 S.W.2d 758, 759–60 (Tenn. 1977)) (quotations omitted).

> To be sufficient and survive a motion to dismiss, a complaint must not be entirely devoid of factual allegations. . . . A complaint need not contain detailed allegations of all the facts giving rise to the claim, but it must contain sufficient factual allegations to articulate a claim for relief. The facts pleaded, and the inferences reasonably drawn from these facts, must raise the pleader's right to relief beyond the speculative level. . . . While a complaint in a tort action need not contain in minute detail the facts that give rise to the claim, *it must contain direct allegations on every material point* necessary to sustain a recovery on any legal theory, even though it may not be the theory suggested ... by the pleader, *or contain allegations from which an inference may fairly be drawn that evidence on these material points will be introduced at trial.*

Id. at 427 (internal citations and quotations omitted) (emphasis in original).

"Unless the court in its order for dismissal otherwise specifies," a dismissal under Rule 12.02(6) "operates as an adjudication upon the merits." Tenn. R. Civ. P. 41.02(3). Thus, granting a Rule 12.02(6) motion amounts to a dismissal with prejudice unless the trial court specifies otherwise. *See Creech v. Addington*, 281 S.W.3d 363, 378 (Tenn. 2009). But "a plaintiff, when a motion to dismiss has been sustained, is ordinarily entitled to amend, if in good conscience and within the applicable rules of law, he may do so." *Tennessee Dep't of Mental Health & Mental Retardation v. Hughes*, 531 S.W.2d 299, 301 (Tenn. 1975).

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III. DISCUSSION

As a preliminary matter, having thoroughly reviewed the Complaint, the Court finds it to allege nine claims, rather than five. "When appropriate, the courts should give effect to the substance of a pleading rather than its form." *Brundage v. Cumberland Cnty.*, 357 S.W.3d 361, 371 (Tenn. 2011); *see also Tolliver v. Tellico Vill. Prop. Owners Ass'n, Inc.*, 579 S.W.3d 8, 16 (Tenn. Ct. App. 2019) ("[i]t is well established that the courts of this state look to the substance rather than the form of pleadings in determining their nature and effect.") (internal citations omitted). When assessing which statute of limitations to apply, "courts must ascertain the gravamen of each claim, not the gravamen of the complaint in its entirety." *Benz-Elliott v. Barrett Enterprises, LP*, 456 S.W.3d 140, 149 (Tenn. 2015). And "gravamen is not dependent upon the 'designation' or 'form' litigants ascribe to an action." *Id.* (citing *Redwing v. Catholic Bishop for the Diocese of Memphis*, 363 S.W.3d 436, 457 (Tenn. 2012)). To ascertain the gravamen of a claim, "a court must first consider the legal basis of the claim and then consider the type of injuries for which damages are sought." *Id.* at 151. "This analysis is necessarily fact-intensive and requires a careful examination of the allegations of the complaint as to each claim for the types of injuries asserted and damages sought." *Id.*

Here, although Plaintiffs designated five causes of action in their Complaint, the Court finds the substance of the pleading to contain nine causes of action:

1. The Congress Developers' claim for Abuse of Process in the Certiorari Actions
2. The Centrum Developers' claim for Abuse of Process in the Certiorari Actions
3. The Congress Developers' claim for Abuse of Process in the Declaratory Judgment Actions
4. The Centrum Developers' claim for Abuse of Process in the Declaratory Judgment Actions
5. The Congress Developers' claim for Malicious Prosecution of the Certiorari Actions

6. The Centrum Developers' claim for Malicious Prosecution of the Certiorari Actions
7. The Congress Developers' claim for Malicious Prosecution of the Declaratory Judgment Actions
8. The Centrum Developers' claim for Malicious Prosecution of the Declaratory Judgment Actions
9. The Congress Developers' claim for Intentional Interference with Prospective Business Relationships

A. ABUSE OF PROCESS

To state a claim for abuse of process, Plaintiffs must allege facts showing:

1. Defendant had an ulterior motive; and
2. Defendant acted in the use of process other than such as would be proper in the regular prosecution of the charge.

Bell ex rel. Snyder v. Icard, Merrill, Cullis, Timm, Furen, and Ginsburg, P.A., 986 S.W.2d 550, 555 (Tenn. 1999); *see also Montpelier v. Moncier*, No. E2016–00246–COA–R3–CV, 2017 WL 2378301, at *6 (Tenn. Ct. App. June 1, 2017); *Blalock v. Preston Law Group, P.C.*, No. M2011–00351–COA–R3–CV, 2012 WL 4503187, at *4 (Tenn. Ct. App. Sept. 28, 2012).

A claim for "abuse of process lies for the improper use of process *after* it has been issued, not for maliciously causing process to issue." *Bell*, 986 S.W.2d at 555 (emphasis in original) (internal citations and quotations omitted); *see also Montpelier*, 2017 WL 2378301, at *5 ("abuse of process only deals with perversions of the tools of litigation occurring after a lawsuit has commenced"). Indeed, "a claim for abuse of process normally rests on some writ, order, or command of the court in the course of a judicial proceeding." *Blalock*, 2012 WL 4503187, at *4.

"The mere existence of an ulterior motive in doing an act, proper in itself, is not sufficient." *Bell*, 986 S.W.2d at 555. "If the action is confined to its regular and legitimate function in relation to the cause of action stated in the complaint, there is no abuse, even if the plaintiff had an ulterior motive in bringing the action." *Montpelier*, 2017 WL 2378301, at *6.

> The test as to whether process has been abused is "whether the process has been used to accomplish some end which is without the regular purview of the process, or which compels the party against whom it is used to do some collateral thing which he could not legally and regularly be compelled to do." In its most basic sense, therefore, an action for abuse of process is intended to prevent parties from using litigation to pursue objectives other than those claimed in the suit, such as using a court's process as a weapon "to compel [another party] ... to take some action or refrain from it." It is the use of process to obtain this "collateral goal"—a result that the process itself was not intended to obtain—that is the very heart of this tort. The essential question to be answered ... is whether the use of process to discourage the other party from continuing the litigation is a sufficiently "collateral goal" to give rise to tort liability.
>
> . . .
>
> "[N]o claim of abuse will be heard if process is used for its lawful purpose, even though it is accompanied with an incidental spiteful motive or awareness that the use of process will result in increased burdens and expenses to the other party," but "a different case is presented when the *primary* purpose of using the court's process is for spite or other ulterior motive."

Id. at *7 (quoting *Givens v. Mullikin*, 75 S.W.3d 383, 400–01 (Tenn. 2002) (emphasis in original)).

1. Abuse of Process in the Certiorari Actions

Defendants argue Plaintiffs' claims for abuse of process in the Certiorari Actions are time-barred by the one-year statute of limitations. (*See* Motion, pp. 19–21). The Court agrees.

There is little doubt that abuse of process claims are subject to a one-year statute of limitations. *See Blalock*, 2012 WL 4503187, at *7; *Warwick v. Warwick*, No. E2011–01969–COA–R3–CV, 2012 WL 5960850, at *17 (Tenn. Ct. App. Nov. 29, 2012). Thus, resolving this issue depends on when the cause of action accrues. "[I]t has generally been held that while a cause of action for abuse of process accrues from the termination of the acts complained of, it does not await completion of the case in which the wrongful use of process occurred." *Blalock*, 2012 WL 4503187, at *7; *see also Cordova v. Martin*, 677 S.W.3d 654, 660 (Tenn. Ct. App. 2023) (quoting *Blalock*).

As Defendants point out, the "acts complained of" in the Complaint are the filing of the Certiorari Actions and the filing of the Declaratory Judgment Actions. (*See* Motion, pp. 20–21). In response, Plaintiffs assert that the "Complaint alleges the abuse of process continued until April 11, 2024." (Response, p. 38 (citing Compl. ¶¶ 99, 111)). Plaintiffs continue:

> The Complaint further alleges that each step Defendant took—the first Chancery Court lawsuits and first appeal, the second Chancery Court lawsuit and second appeal, followed by petition to the Tennessee Supreme Court, and all the contradictory and immaterial arguments and theories along the way—was a part of Defendants' long-running abuse of the judicial process that concluded, at least for now, on April 11, 2024.

Id.

Plaintiffs' counterarguments that Defendants engaged in one long abuse of process across both the Certiorari Actions and the Declaratory Judgment Actions, and the related appeals, does not square with *Blalock*, where the Court of Appeals rejected a similar argument:

> Dr. Blalock argues that his complaint for abuse of process is timely, even under the one year statute of limitations, because the general rule is that the statute begins to run against a claim of abuse of process from the termination of the acts which constitute the abuse complained of. He reasons that it is an abuse of process for Preston to continue to prosecute Landlord's claim for money he has already paid, and that the abuse has not terminated, for it continues so long as Landlord's suit against him remains unresolved. He has not offered any authority that specifically endorses this suggested interpretation of the general rule.

Blalock, 2012 WL 4503187, at *7 (internal citations and quotations omitted).

"A plaintiff must allege that the defendant employed a **specific legal process** for a purpose for which it was not designed in order to compel a party to do something that it could not be compelled to do by the use of that process." *Montpelier*, 2017 WL 2378301, at *5 (citations omitted) (emphasis added). Here, the specific legal processes Plaintiffs complain of are the filing of lawsuits and taking appeals. Even construing all allegations in the Complaint in favor of Plaintiffs, the latest possibly abusive act complained of in the Certiorari Actions was taking the

appeal, which occurred on May 31, 2022. The latest possibly abusive act complained of in the Declaratory Judgment Actions was petitioning the Tennessee Supreme Court for review, which occurred on or about December 26, 2023. Accordingly, Plaintiffs' claims for abuse of process in the Certiorari Actions are barred by the one-year statute of limitations, but Plaintiffs' claims for abuse of process in the Declaratory Judgment Actions are not. Plaintiffs' claims for abuse of process in the Certiorari Actions are therefore **DISMISSED WITH PREJUDICE.**

2. Abuse of Process in the Declaratory Judgment Actions

Defendants next argue that Plaintiffs have not identified any act other than such as would be proper in the regular prosecution of the charge. Specifically, Defendants contend that Plaintiffs failed to allege any abuse of judicial power or the authority of a court, a necessary prerequisite to an abuse of process claim. (Motion, pp. 21–23). In response, Plaintiffs aver:

> Defendants used multiple and never-ending litigations and related appeals merely as a "tool" of delay to force the Plaintiffs to pay massive sums of money out of their own pockets, and to hinder Plaintiffs' ability to receive the financing they needed to proceed with the Developments or otherwise risk complete financial ruin. Under any reasonable application of the Rule 12.02(6) standard, Plaintiffs have stated a claim for abuse of process because they have alleged that, seeking purely financial gain, Defendants filed and pursued baseless lawsuits all for the purpose of exacting a financial toll on the Plaintiffs to which Defendants could never be entitled under their sought declaratory relief. The efforts and motivations in doing so intentionally fell far outside the limitations of their lawsuits. Defendants just needed a lawsuit, any lawsuit, to advance their actual purposes.

(Response, p. 41 (internal citations omitted)).

In their Reply, Defendants contend all actions they took were proper in the regular prosecution of the charge and accuse Plaintiffs of adding facts in their briefing that appear nowhere in the Complaint. (*See* Reply, pp. 18–19).[3] In their Supplemental Brief, Plaintiffs aver that

[3] The Court notes that all of the "facts" in Plaintiffs' Response about which Defendants complain are all matters of public record in the Declaratory Judgment Actions, which, as Defendants themselves observed in their opening Motion, the Court can judicially notice and consider on Rule 12.02(6) motions. (*See* Motion, p. 9, n.14).

Defendants take a far too narrow view of the actions that can constitute abuse of process. (*See* Suppl. Br., pp. 9–18). Citing a plethora of cases from other jurisdictions, they assert abuse of process claims can be brought for abusive motions practice, discovery tactics, and even the filing of a lawsuit. *Id.*

It is true that, in Tennessee, "a claim for abuse of process normally rests on some writ, order, or command of the court in the course of a judicial proceeding." *Blalock*, 2012 WL 4503187, at *4. But it can also rest on abusive discovery tactics, *Givens*, 75 S.W.3d at 402, although no such allegation exists in this case because no discovery was ever taken. Regardless, a claim for abuse of process can be made:

> when (1) the party who employs the process of a court specifically and *primarily* intends to increase the burden and expense of litigation to the other side; and (2) the use of that process cannot otherwise be said to be for the "legitimate or reasonably justifiable purposes of advancing [the party's] interests in the ongoing litigation."

Montpelier, 2017 WL 2378301, at *7 (quoting *Givens*, 75 S.W.3d at 402 (emphasis in original)).

Here, the allegedly abusive acts complained of are the filing of lawsuits and taking appeals as of right. The Court does not take a position on whether Defendants had ulterior motives. However, merely by bringing the lawsuits and appealing unfavorable rulings, Defendants had legitimate or reasonably justifiable purposes of advancing their interests in the litigation. "Mere initiation of a lawsuit, though accompanied by a malicious ulterior motive, is not abuse of process." *Bell*, 986 S.W.2d at 555. Accordingly, Plaintiffs do not state claims for abuse of process in the Declaratory Judgment Actions upon which relief can be granted, and those claims are therefore **DISMISSED WITHOUT PREJUDICE**.

B. MALICIOUS PROSECUTION

To make out a *prima facie* case of malicious prosecution, Plaintiffs must establish:

1. Defendant instituted a proceeding without probable cause;
2. Defendant acted with malice; and
3. The proceeding terminated on the merits in favor of Plaintiff.

Mynatt v. Nat'l Treasury Emps. Union, Chapter 39, 669 S.W.3d 741, 746 (Tenn. 2023); *Himmelfarb v. Allain*, 380 S.W.3d 35, 38 (Tenn. 2012); *Parrish v. Marquis*, 172 S.W.3d 526, 530 (Tenn. 2005).

1. Malicious Prosecution of the Certiorari Actions

Defendants argue Plaintiffs' claims for malicious prosecution of the Certiorari Actions fail because those actions did not terminate finally on the merits. (*See* Motion, pp. 23–25). Based on the Tennessee Supreme Court's decisions in *Mynatt* and *Himmelfarb*, the Court must agree.

Plaintiffs argue the Court should ignore the termination of the appeal and instead focus on how the Certiorari Actions concluded in the trial court. (*See* Response, pp. 44–45). But that approach does not square with Tennessee Supreme Court precedent. "A plaintiff can pursue a claim for malicious prosecution only if an objective examination, **limited to the documents disposing of the proceeding or the applicable procedural rules**, indicates the termination of the underlying criminal proceeding reflects on the merits of the case and was due to the innocence of the accused." *Mynatt*, 669 S.W.3d at 752 (emphasis added). What's more, the *Himmelfarb* Court held that "a voluntary nonsuit is not a favorable termination on the merits." 380 S.W.3d at 41.

The Certiorari Actions terminated when the Court of Appeals granted Defendants' Motion for Voluntary Dismissal. The same logic of *Himmelfarb* applies here, and the Court thus concludes the Certiorari Actions did not terminate finally on the merits. Plaintiffs' claims for malicious prosecution of the Certiorari Actions must therefore be **DISMISSED WITH PREJUDICE**.

2. Malicious Prosecution of the Declaratory Judgment Actions

Defendants next contend that Plaintiffs' claims for malicious prosecution of the Declaratory Judgment Actions fail because Defendants had probable cause to bring those actions. (*See* Motion, pp. 25–27).

"Properly defined, probable cause requires only the existence of such facts and circumstances sufficient to excite in a reasonable mind the belief that the accused is guilty of the crime charged." *Smith v. Kwik Fuel Center*, No. E2005–00741–COA–R3–CV, 2006 WL 770469, at *7 (Tenn. Ct. App. Mar. 27, 2006) (quoting *Roberts v. Federal Express Corp.*, 842 S.W.2d 246, 248 (Tenn. 1992)). "Probable cause is to be determined solely from an objective examination of the surrounding facts and circumstances." *Id.* "The relevant time for the existence of probable cause is at the time prosecution was initiated." *Leland v. Louisville Ladder Group, LLC*, No. M2006–02109–COA–R3–CV, 2007 WL 4440923, at *4 (Tenn. Ct. App. Dec. 5, 2007) (internal quotations and citations omitted).

Plaintiffs respond by arguing that the mere fact lending couldn't be secured while uncertain litigation was pending does not mean probable cause existed to initiate the litigation, as all litigation involves some level of uncertainty. (*See* Response, pp. 45–46). While the Court agrees with Plaintiffs' position, their argument misses the larger point: these lawsuits were declaratory judgment actions. As Defendants aver, "the purpose of a declaratory judgment action is not to award affirmative relief, but to resolve a dispute, afford relief from uncertainty with respect to rights, status, and other legal relations." (Motion, p. 26 (citing *Blackwell v. Haslam*, No. M2011–00588–COA–R3–CV, 2012 WL 113655, at *7 (Tenn. Ct. App. Jan. 11, 2012)) (quotations and emphasis omitted). Defendants note that, "to obtain a declaratory judgment, a plaintiff need only 'allege facts which show he has a real, as contrasted with a theoretical, interest in the question to

be decided and that he is seeking to vindicate an existing right under presently existing facts.'" *Id.* (quoting *Grant v. Anderson*, No. M2016–01867–COA–R3–CV, 2018 WL 2324359, at *5 (Tenn. Ct. App. May 22, 2018); *Burkett v. Ashley*, 535 S.W.2d 332, 333 (Tenn. 1976)). Indeed, the Declaratory Judgments Act confers broad standing to bring such lawsuits on a variety of subjects:

> Any person . . . whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder.

Tenn. Code Ann. § 29–14–103.

Based on the foregoing, the Court cannot conclude Defendants lacked probable cause to initiate the Declaratory Judgment Actions. While the Court rejects the notion advanced by Defendants that "Tennessee law categorically forbids litigants from basing malicious prosecution claims on earlier declaratory judgment actions" (Motion, p. 26), the Court finds the facts and circumstances surrounding the SP zoning ordinances were "sufficient to excite in a reasonable mind" the belief that Defendants could obtain a favorable declaration of their rights, status, or other legal relations thereunder. *Smith*, 2006 WL 770469, at *7. As such, Plaintiffs' claims for malicious prosecution of the Declaratory Judgment Actions are **DISMISSED WITHOUT PREJUDICE**.

C. INTENTIONAL INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONSHIPS

To make out a *prima facie* case of intentional interference with business relationships, Plaintiffs must establish:

1. Plaintiff had an existing or prospective business relationship with a specific third party or identifiable class of third persons;
2. Defendant knew of that relationship, and was not merely aware of Plaintiff's business dealings with others in general;
3. Defendant intended to cause the breach or termination of that business relationship;

4. Defendant had improper motive or used improper means; and

5. Plaintiff sustained damages as a result of the tortious interference.

Trau-Med of America, Inc. v. Allstate Ins. Co., 71 S.W.3d 691, 701 (Tenn. 2002).

1. Motion to Dismiss

a. Gravamen of the Claim

Defendants argue the gravamen of the Congress Developers' claim for intentional interference with prospective business relationships is really a claim for either abuse of process or malicious prosecution, and it should therefore be dismissed for the same reasons Defendants succeed on the Congress Developers' other claims. (*See* Motion, pp. 32–34). The Court disagrees.

As previously mentioned, to ascertain the gravamen of a claim, "a court must first consider the legal basis of the claim and then consider the type of injuries for which damages are sought." *Benz-Elliott*, 456 S.W.3d at 151.

The Court begins with the legal basis of the claim. According to Defendants, two – and only two – tort actions can be brought for the alleged misuse of legal proceedings: malicious prosecution and abuse of process. (Motion, p. 32). Defendants stake their position on a single sentence from *Bell* and other cases: "In Tennessee, there are two tort actions which may be brought to obtain redress for the alleged misuse of legal process by another: malicious prosecution and abuse of process." *Bell*, 986 S.W.2d at 555. Thus, as Defendants put it, "unless every Tennessee appellate decision addressing the matter for the past half century has been mistaken that Tennessee law only recognizes 'two' tort claims for alleged misuse of legal process, . . . then something is amiss." (Motion, p. 33). However, each case cited by Defendants *distinguishes between* malicious prosecution and abuse of process. No case cited by Defendants stands for the proposition that malicious prosecution and abuse of process claims foreclose altogether a claim for intentional interference with prospective business relationships. Plaintiffs, in response, observe:

> None of the cases cited by Defendants to support this argument involves a tortious interference claim. Additionally, in none of the cited cases was a court tasked with determining whether a plaintiff's tortious interference claim should be dismissed. And in none of the cited cases did a court find that there are "***only*** two" actions that may be brought related to unfounded litigation.

(Response, p. 34 (emphasis in original)).

While the Congress Developers allege in their previous claims that the underlying litigation *itself* was improper, here the Congress Developers allege that the underlying litigation (and its concomitant uncertainty) impacted their relationships with third parties. The Court believes the legal basis of this claim is distinguishable from claims for abuse of process or malicious prosecution.

Next, the Court must consider the type of injuries for which damages are sought. In its claim for intentional interference with prospective business relationships, the Congress Developers allege a separate and distinct harm flowing from this tort, as opposed to its previous claims. Specifically, Plaintiffs allege commercial interest rates steadily rose, from about 2.85% to 6.76%, while the underlying litigation was pending. (*See* Compl., ¶ 146). When considering a commercial loan for $425,000,000.00, basis points (much less entire percentage points) matter. This is a distinct injury from those alleged for the Congress Developers' claims for abuse of process and malicious prosecution.

Accordingly, the Court concludes the gravamen of the Congress Developers' claim for intentional interference with prospective business relationships is not merely an abuse of process or malicious prosecution claim. It is a separate and independent cause of action.

b. Elements of the Claim

The Court will next determine whether Plaintiffs have stated a claim upon which relief can be granted. There is little question in this case that the Congress Developers had a prospective

business relationship with an identifiable class of third parties – commercial financial lenders – and Defendants do not appear to contend otherwise. However, Defendants raise arguments against each remaining element of the Congress Developers' claim for intentional interference with prospective business relationships. Specifically, Defendants contend (1) they did not know of any specific business relationship between the Congress Developers and lending institutions, (2) they did not intend to cause the breach or termination of the Congress Developers' prospective business relationships, (3) the Congress Developers fail to establish improper interference as a matter of law, and (4) the Congress Developers did not sustain any damages causally connected to the Defendants actions. (*See generally* Motion, pp. 36–41). Plaintiffs, in response, contend they adequately alleged each element of the cause of action. (*See* Response, pp. 30–33).

First, the Court finds the Complaint sufficiently alleges Defendants' knowledge of the prospective business relationships with an identifiable class of third parties. The Congress Developers allege as follows:

> Specifically, during a discussion between the Parties after the filing of the [Certiorari Actions], Defendants told Plaintiffs exactly what they were doing. Defendants stated that they knew Plaintiffs could not afford to litigate these cases while paying the many millions of dollars in costs associated with maintaining and delaying the Developments in the interim, and that Defendants were well aware that, as a result of the pending litigation regarding the Developments, Plaintiffs were unable to obtain financing for the same. No lender is going to front the necessary tens of millions of dollars for a project that is, at least on paper, susceptible to judicial cancellation.

(Compl., ¶ 39; *see also id.* ¶ 144 ("Defendants told the Congress Developers that they knew lending institutions would not finance the Second and Peabody Development while it was the subject of Defendants' multiple lawsuits, and Defendants knew they were holding the Congress Developers hostage as a result.")).

Defendants argue they had only a mere awareness of the Congress Developers' prospective relationships with financial lenders, but these allegations say otherwise. As Plaintiffs contend, "[n]othing more needs to be pled or shown at this stage to advance a tortious interference claim under the *Trau-Med* standard." (Response, p. 32). Taking the Complaint as true, as the Court must, the Congress Developers have sufficiently pled the second element of their claim for intentional interference with prospective business relationships.

Second, the Court finds the Complaint, although somewhat conclusory, sufficiently alleges Defendants' intent to cause a breach of Plaintiffs' prospective business relationships. The Court need look no further than paragraph 62 of the Complaint for Defendants' intent: "As Plaintiffs were leaving the Metro Council hearing, Defendant Snyder exclaimed to Plaintiffs, 'I'm like a dog on a bone! I'm not going away!'" (Compl., ¶ 62; *see also id.* ¶¶ 35, 37, 39). The Court believes these remarks, and the other statements Defendants are alleged to have made, are sufficient to satisfy the third element of the Congress Developers' claim for intentional interference with prospective business relationships.

Third, the Court concludes that the Complaint sufficiently alleges an improper motive on the part of Defendants. The "determination of whether a defendant acted 'improperly' or possessed an 'improper motive' is dependent on the particular facts and circumstances of a given case, and as a result, a precise, all-encompassing definition of the term 'improper' is neither possible nor helpful." *Trau-Med*, 71 S.W.3d at 701 n.5. Examples of improper interference include:

> those means that are illegal or independently tortious, such as violations of statutes, regulations, or recognized common-law rules; violence, threats or intimidation, bribery, unfounded litigation, fraud, misrepresentation or deceit, defamation, duress, undue influence, misuse of inside or confidential information, or breach of a fiduciary relationship; and those methods that violate an established standard of a trade or profession, or otherwise involve unethical conduct, such as sharp dealing, overreaching, or unfair competition.

Id.

Because the Court finds the underlying litigation was founded at least on probable cause, and therefore the Defendants used proper "means," the Court must determine whether an "improper motive" alone is sufficient to support a claim for intentional interference with prospective business relationships. The Court concludes that it is. "It is important to note that *either* 'improper motive' or 'improper means' will suffice" to establish the fourth element. *Watson's Carpet and Floor Coverings, Inc. v. McCormick*, 247 S.W.3d 169, 176 (Tenn. Ct. App. 2007) (emphasis in original); *see also* Restatement (Third) of Torts: Liab. For Econ. Harm § 18 rep. note b (Am. Law Inst. 2020) (citing *Trau-Med* and noting the case holds to the English common law doctrine where liability could be imposed "if the defendant acted 'wrongfully and maliciously'; it was not necessary that the defendant's conduct be tortious or otherwise unlawful."). Thus, unlike other jurisdictions, a predicate tort is not required in Tennessee to support a claim for intentional interference with prospective business relationships – improper motive is all that is required.

To establish "improper motive," a plaintiff must "demonstrate that the defendant's predominant purpose was to injure the plaintiff." *Trau-Med*, 71 S.W.3d at 701 n.5; *Watson's Carpet*, 247 S.W.3d at 176 (quoting same). Here, the Complaint is replete with allegations that Defendants had an improper motive in bringing the underlying litigation. (*See* Compl., ¶¶ 1–3, 35, 37–41, 48–50, 52, 58, 62, 64–68, 76–77, 80, 82–83). Further, these allegations make clear that Defendants' predominant purpose was to prevent construction of the residential developments by inflicting delay and financial hardship through litigation. Plaintiffs have thus sufficiently alleged the fourth element.

Fourth and finally, the Court finds that the Complaint sufficiently alleges damages causally connected to Defendants' actions. (*See* Compl., ¶¶ 37, 39, 146). As previously mentioned,

Plaintiffs specifically allege that, while Defendants' actions precluded them from obtaining financing, interest rates on available loans increased threefold. *Id.* at ¶ 146. These damages are both a but-for and foreseeable result of the underlying litigation, and therefore the Court finds that Plaintiffs have adequately alleged causally connected damages.

Because Plaintiffs have sufficiently alleged all necessary elements for the tort of intentional interference with prospective business relationships in their Complaint, Defendants' Motion to Dismiss this claim is **DENIED**.

2. TPPA Petition to Dismiss

Having concluded that Plaintiffs state a claim for intentional interference with prospective business relationships upon which relief can be granted, the Court must determine whether Defendants are entitled to the alternate relief they seek: dismissal under the Tennessee Public Participation Act ("TPPA"), Tenn. Code Ann. § 20–17–101, *et seq*.

Under the TPPA's burden-shifting framework, Defendants first have the burden of establishing the TPPA applies. That is, the case "is based on, relates to, or is in response to that party's exercise of the right to free speech, right to petition, or right of association." Tenn. Code Ann. § 20–17–105(a). If such a showing is made, the burden shifts to Plaintiffs to bring forth "sworn affidavits stating admissible evidence upon which the liability … is based" and "other admissible evidence" to establish a *prima facie* case. Tenn. Code Ann. § 20–17–105(b), –105(d). To establish a *prima facie* case, "a party must present enough evidence to allow the jury to rule in his favor on that issue." *Charles v. McQueen*, 693 S.W.3d 262, 281 (Tenn. 2024). "As is the case when a court rules on a motion for summary judgment or motion for directed verdict, the court should view the evidence in the light most favorable to the party seeking to establish the prima facie case and disregard countervailing evidence." *Id.*

If the responding party cannot establish a *prima facie* case for each essential element of the claim, the case must be dismissed. Tenn. Code Ann. § 20–17–105(b). If, however, Plaintiffs do establish a *prima facie* case, the burden shifts back to Defendants to establish a valid defense to the claim. Tenn. Code Ann. § 20–17–105(c). If a valid defense is established, the case must be dismissed. *Id.*

As a preliminary matter, Plaintiffs contend a TPPA petition can only be granted or denied *in toto*. (*See* Resp., pp. 2–4, 16). In reply, Defendants maintain that a TPPA petition can be granted in part and denied in part as to any individual claim. (Reply, pp. 2–4). The Court agrees. As Defendants point out, the plain language of the TPPA supports this conclusion. *See* Tenn. Code Ann. § 20–17–103(5) ("'Legal action' means a claim, cause of action, petition, cross-claim, or counterclaim or any request for legal or equitable relief initiated against a private party."). Because this language is unambiguous, the Court need go no further. A TPPA petition may address a single "claim" or "cause of action."

a. Application of TPPA

There can really be no question that the TPPA applies to this case. The basis for all of Plaintiffs' claims, including the Congress Developers' claim for intentional interference with prospective business relationships, is the filing of lawsuits. Thus, the case "is based on," "relates to," and "is in response to" the Defendants' exercise of their right to petition. Tenn. Code Ann. § 20–17–105(a); *see also* Tenn. Code Ann. § 20–17–103(4) (defining "exercise of the right to petition").

b. Admissibility of Evidence

In their Reply, Defendants strenuously object to evidence brought forth by Plaintiffs to satisfy their burden of establishing a prima facie case for all of their claims. (*See generally* Reply,

pp. 5–16). Specifically, Defendants object to the admissibility of (1) confidential settlement communications, (2) unverified allegations in the Complaint and from websites, (3) Exhibit A to Plaintiffs' Response, (4) hearsay in the Stratouly Affidavit, and (5) several incompetent, irrelevant, or hearsay assertions made in the Williams Affidavit. *Id.*

Because the Court is addressing only the Congress Developers' claim for intentional interference with prospective business relationships, the Court does not find Exhibit A to Plaintiffs' Response relevant and will not consider it. The Court therefore makes no ruling as to its admissibility. Further, with respect to Defendants' concern about unverified allegations in Plaintiffs' Complaint, the Court agrees they should not be considered in a TPPA analysis. However, the Court notes that several paragraphs in the Complaint *were* verified, albeit after the fact, in the affidavits submitted by the officers of the Plaintiff corporations. (*See* Stratouly Aff., ¶ 8 (verifying ¶¶ 21–26 of the Complaint); Brown Aff., ¶ 3 (verifying ¶¶ 27–33, 50–55, and 60 of the Complaint)).

The Court's TPPA analysis is based on the affidavits of Dean Stratouly and Matthew Williams.[4] Accordingly, the Court will only address Defendants' objections related to these two documents.

i. Stratouly Affidavit

Defendants first argue that the Congress Developers offered inadmissible settlement communications to support their claim, which the Court should not consider. (*See* Reply, pp. 6–10). Defendants primarily rely on Tenn. R. Evid. 408 and a confidentiality agreement between the parties. *Id.* In response, Plaintiffs contend the evidence is admissible for another purpose, such as showing a party's bad faith or improper motive. (*See* Suppl. Br., pp. 6–9). And even if it is

[4] Because the focus of the Court's TPPA analysis is on the claim brought only by the Congress Developers, the Court does not find the affidavit of Roger Brown to be relevant and will disregard it.

inadmissible, Plaintiffs argue the evidence they offered that does not come from any settlement negotiations is still sufficient to make a *prima facie* case. *Id.* at 4–5. While the Court agrees with Defendants on the admissibility of communications made during compromise negotiations, the Court ultimately agrees with Plaintiffs that, notwithstanding the settlement communications, they still establish a *prima facie* case.

Rule 408 provides as follows:

> Evidence of (1) furnishing or offering to furnish or (2) accepting or offering to accept a valuable consideration in compromising or attempting to compromise a claim, whether in the present litigation or related litigation, which claim was disputed or was reasonably expected to be disputed as to either validity or amount, is not admissible to prove liability for or invalidity of a civil claim or its amount or a criminal charge or its punishment. **Evidence of conduct or statements made in compromise negotiations is likewise not admissible.** This rule does not require the exclusion of any evidence actually obtained during discovery merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution; however, a party may not be impeached by a prior inconsistent statement made in compromise negotiations.

Tenn. R. Evid. 408 (emphasis added).

While Plaintiffs offer authority suggesting the Court can consider communications made during compromise negotiations, the Court respectfully declines to do so. The Court finds that this case is sufficiently related litigation such that the requirements of Rule 408, not its exceptions, should apply. Defendants objection is therefore sustained, and the Court will disregard paragraphs 16 through 22 of the Stratouly Affidavit. Nonetheless, as discussed below, the Court concludes the Congress Developers have made a sufficient *prima facie* showing, notwithstanding Defendants objection.

Defendants next argue that several statements in the Stratouly Affidavit – specifically in paragraphs 31, 32, and 35 – are inadmissible hearsay. (*See* Reply, pp. 12–14). The Court disagrees.

First, the Court finds no out-of-court "statements" in paragraph 31, as that term is defined in Tenn. R. Evid. 801(a). Second, there is only a single sentence in paragraph 32 that could be considered hearsay: "It told us that, while confident that we would ultimately prevail against the lawsuits, there is no such thing as a 100% guarantee of the outcome, in addition to the uncertainty of timing." (Stratouly Aff., ¶ 32). The Court will disregard this sentence but will consider the remainder of paragraph 32. Third, the Court reads paragraph 35 to indicate Defendant Snyder's statement was made to, and heard by, Mr. Stratouly. The statement is therefore admissible against Defendant Snyder. *See* Tenn. R. Evid. 803(1.2). The Court will not disregard paragraph 35.

ii. Williams Affidavit

Defendants contend the Affidavit of Matthew Williams is, in parts, not based on personal knowledge, irrelevant, or hearsay. (*See* Reply, pp. 15–16). Specifically, Defendants aver paragraphs 5, 9, 10, and 18 are based on "belief" and not personal knowledge, as required by Tenn. R. Evid. 602. *Id.* at 15. They also aver paragraphs 7, 15, 16, and 18 are irrelevant because they pertain to a separate real estate development entirely unrelated to the Congress Developers. *Id.* Finally, Defendants take issue with any statement that may be considered hearsay and does not fall into a recognized exception. *Id.* at 15–16. Defendants, however, do not point to specific statements they seek to exclude, so the Court will overrule this hearsay objection.

With respect to statements involving Mr. Williams' "beliefs," the Court does not find Mr. Williams lacks personal knowledge to testify about his own beliefs. They are just that – his beliefs – and the Court will treat them as such. Defendants' objection is overruled.

With respect to statements regarding Mr. Williams' separate, unrelated real estate development, the Court finds the statements make Defendants' improper motive more or less

probable, and thus they meet the low bar for admissibility under Tenn. R. Evid. 401. Defendants' objection is overruled.

c. Prima Facie Case

As previously mentioned, once the Court concludes the TPPA applies, the Congress Developers have the burden of establishing a *prima facie* case for intentional interference with prospective business relationships. Tenn. Code Ann. § 20–17–105(b). They contend the affidavits they submitted make such a showing. (*See* Response, pp. 18–22). The Court agrees.

Defendants again take issue with the second, third, fourth, and fifth elements of the Congress Developers' claim. (*See* Reply, pp. 23–26). They contend the fourth element is not met because the underlying litigation was not "unfounded," and the other elements can only be shown by considering inadmissible evidence. *Id.* However, the Court finds the affidavits of Dean Stratouly and Matthew Williams sufficiently support each element of the Congress Developers' claim for intentional interference with prospective business relationships. The first element is supported by paragraphs 31 and 32 of the Stratouly Affidavit. The second element is supported by paragraphs 23 and 31 of the Stratouly Affidavit. The third element is supported by paragraph 35 of the Stratouly Affidavit and paragraphs 8, 15, and 17 of the Williams Affidavit. The fourth element is supported by paragraph 9 of the Stratouly Affidavit and paragraphs 7, 8, 15, and 17 of the Williams Affidavit. Finally, the fifth element is supported by paragraphs 32 and 47 of the Stratouly Affidavit. Thus, the Court concludes the Congress Developers have made at least a *prima facie* showing of all elements of their claim.

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d. Valid Defenses

Having concluded the Congress Developers established a *prima facie* case, the burden shifts back to Defendants to establish valid defenses. Tenn. Code Ann. § 20–17–105(c). Defendants claim to have such defenses. (*See* Motion, pp. 45–51; Reply, pp. 33–37).

First, Defendants argue the Congress Developers fail to state a claim upon which relief can be granted. (*See* Motion, p. 45). The Court has already concluded this defense is without merit. *Supra*, pp. 18–21.

Second, Defendants claim to have relied on the advice of counsel, which they contend applies not only to the abuse of process and malicious prosecution claims but also the intentional interference claim. (*See* Reply, p. 33). The Court might be persuaded if it concluded Defendants used "improper means" to effectuate their interference. But the Court concluded Defendants had an "improper motive," separate and apart from any advice of counsel. *Supra*, p. 20. Thus, the Court concludes this defense does not apply.

Third, Defendants claim to be immune from suit under Tenn. Code Ann. § 4–21–1003(a). (*See* Motion, pp. 48–49; Reply, pp. 35–37). In response, Plaintiffs contend the statute is inapplicable. (*See* Response, pp. 51–53). The Court concludes Plaintiffs' damages do not stem from any information communicated to a court, but rather from how it was communicated. What's more, the information Defendants communicated to a court did not regard a "matter of concern" to the court. The statute is thus inapplicable and this defense is without merit.

Fourth and finally, Defendants argue Plaintiffs cannot recover for an allegedly frivolous appeal. (*See* Motion, pp. 49–51). But no such allegation has been made by Plaintiffs, and this defense is also without merit.

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IV. CONCLUSION

For the foregoing reasons, Defendants' Motion is hereby **GRANTED IN PART** and **DENIED IN PART**. Accordingly, it is hereby **ORDERED, ADJUDGED, and DECREED**:

1. Plaintiffs' claims for Abuse of Process in the Certiorari Actions are **DISMISSED WITH PREJUDICE**;
2. Plaintiffs' claims for Abuse of Process in the Declaratory Judgment Actions are **DISMISSED WITHOUT PREJUDICE**;
3. Plaintiffs' claims for Malicious Prosecution in the Certiorari Actions are **DISMISSED WITH PREJUDICE**;
4. Plaintiffs' claims for Malicious Prosecution in the Declaratory Judgment Actions are **DISMISSED WITHOUT PREJUDICE**;
5. Defendants' Motion to Dismiss the Congress Developers' claim for Intentional Interference with Prospective Business Relationships is **DENIED**;
6. Defendants' Petition to Dismiss the Congress Developers' claim for Intentional Interference with Prospective Business Relationships, pursuant to the TPPA, is **DENIED**.

It is so **ORDERED**.

Lynne T. Ingram

HON. LYNNE T. INGRAM
CIRCUIT JUDGE

Entered this the 22nd day of November, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Order was sent electronically via the Court's Electronic Filing System or by U.S. Postal Mail to the following individuals on this the 22nd day of November, 2024:

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